

The Honorable Thomas S. Zilly

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

BAINS LLC d/b/a Flying B,)
Plaintiff,) No. C01-0235Z
v.) DEFENDANT ARCO PRODUCTS
ARCO PRODUCTS COMPANY, a division of) COMPANY'S BRIEF RE
Atlantic Richfield Co., a Delaware Company,) AMOUNT OF PUNITIVE
Defendant.,) DAMAGES

Defendant ARCO Products Company (“ARCO”) respectfully requests that the Court remit the amount of punitive damages to \$300,000. ARCO’s position on the appropriate amount of punitive damages, if any, was set forth in its post trial briefing and is further supported by recent Supreme Court authority as applied by the Ninth Circuit in this case.

The Ninth Circuit recognized that after this Court reviewed the punitive damages award, the Supreme Court clarified the constitutional standard in *State Farm Mut. Auto. Ins. Co. v. Campbell*, 538 U.S. 408 (2003). See *Bains LLC v. ARCO Products Co.*, 405 F.3d 764, 777 (9th Cir. 2005) (noting that *State Farm* “came down after the district court had ruled”). In *State Farm*, the Supreme Court held that “few awards exceeding a single-digit ratio between punitive and compensatory damages, to a significant degree, will

**ARCO'S REMITTITUR BRIEF
(C01-0235Z) — 1**
SEA 1710310v1 58382-1

Davis Wright Tremaine LLP
LAW OFFICES
2600 Century Square • 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 Fax: (206) 628-7699

1 satisfy due process.” *State Farm*, 538 U.S. at 425. The Supreme Court further emphasized
 2 that “an award of more than four times the amount of compensatory damages might be
 3 close to the line of constitutional improbity.” *See id.*

4 Applying the guidance of *State Farm* to the instant case, the Ninth Circuit held that
 5 where, as here, the plaintiff had recovered just \$1 in nominal damages and \$50,000 in
 6 breach of contract damages, a punitive award of \$5 million could not stand. *Bains LLC v.*
 7 *ARCO Products Co.*, 405 F.3d 764, 775-76 (9th Cir. 2005). Instead, the Ninth Circuit
 8 determined that plaintiff should be permitted to recover punitive damages between
 9 \$300,000 and \$450,000.

10 ARCO respectfully submits that the Court should award \$300,000 in punitive
 11 damages in this case. As the Ninth Circuit held, although this case involves a claim of
 12 racial discrimination, which is “highly reprehensible,” the conduct at issue was “not
 13 threatening to life or limb.” *See id.* at 777. Thus, in light of the facts in this case, and
 14 given that *State Farm* recognized that a ratio of four to one stands near the “line of
 15 constitutional improbity,” permitting Flying B to recover \$300,000—an award six times
 16 the compensatory damages—would be appropriate given the Ninth Circuit’s opinion and
 17 the facts of this case.

18 In addition, the Ninth Circuit recognized that an award of \$300,000 would be
 19 appropriate because Congress has set \$300,000 as the limit on punitive damages in Title
 20 VII cases, reflecting the fact that “Congress regards \$300,000 as the highest appropriate
 21 amount in somewhat comparable cases.” *Bains*, 405 F.3d at 777. There is no basis for
 22 awarding the plaintiff corporation a punitive award that far exceeds the cap, where
 23 Congress has provided that a similarly situated Title VII plaintiff would recover no more

1 than \$300,000. Therefore, a punitive award of \$300,000 would not only provide plaintiff
2 with six times its economic harm, but it would also reflect judicial deference to the
3 legislative judgment reflected by the statutory cap.

4 For these reasons, and as set forth in further detail in ARCO's post-trial briefs and
5 the Ninth Circuit's opinion, the punitive damages award should be remitted to \$300,000.

6 DATED this 11th day of October, 2005.

7 Davis Wright Tremaine LLP
8 Attorneys for Defendant ARCO Products
9 Company

10 By s/

11 Michael Reiss, WSBA #10707
12 1501 Fourth Avenue, Suite 2600
Seattle, WA 98101-1688
Telephone: (206) 622-3150
Fax: (206) 628-7699
Email: mikereiss@dwt.com

13
14 **CERTIFICATE OF SERVICE**

15 I hereby certify that on this 11th day of October, 2005, I electronically filed
16 **DEFENDANT ARCO PRODUCTS COMPANY'S BRIEF RE AMOUNT OF**
17 **PUNITIVE DAMAGES** with the Clerk of the Court using the CM/ECF system which
18 will send notification of such filing to the following:

19 Sara S Bowen sarabowen@dwt.com, margaretsinnott@dwt.com

20 Patricia Kay Buchanan pkb@leesmart.com, acp@leesmart.com

21 Holly M Hearn hollyhearn@dwt.com, selahbrown@dwt.com

22 Erik J Heipt erik@budgeandheipt.com,

23 Michael Reiss mikereiss@dwt.com, margaretsinnott@dwt.com

ARCO'S REMITTITUR BRIEF
(C01-0235Z) — 3

SEA 1710310v1 58382-1

Davis Wright Tremaine LLP
LAW OFFICES
2600 Century Square • 1501 Fourth Avenue
Seattle, Washington 98101-1688
(206) 622-3150 • Fax: (206) 628-7699

1 and I hereby certify that I have mailed by United States Postal Service the document to the
2 following non-CM/ECF participants:

3 None.
4

5 Davis Wright Tremaine LLP
6 Attorneys for Defendant ARCO Products
7 Company

8 By s/ _____
9 Michael Reiss, WSBA #10707
10 1501 Fourth Avenue, Suite 2600
Seattle, WA 98101-1688
Telephone: (206) 622-3150
Fax: (206) 628-7699
Email: mikereiss@dwt.com